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(2)

No. 90-1294

In The

Supreme Court of the United States

October Term, 1990

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

Petitioner,

vs.

HONORABLE NICHOLAS G. BYRON, JUDGE, CIRCUIT COURT OF MADISON COUNTY, ILLINOIS AND MARLIN GARIEN,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Illinois

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Order of the Supreme Court of Illinois denying Petitioner's Motion for Leave to File a Complaint for Order of Prohibition was a final judgment warranting review by this Court by writ of certiorari.

2. Whether it is within the sound discretion of a court to reinstate a conditionally dismissed cause of action after those conditions are violated.

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HONORABLE NICHOLAS G. BYRON, JUDGE, CIRCUIT COURT OF MADISON COUNTY, ILLINOIS AND MARLIN GARIEN,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Illinois

BRIEF IN OPPOSITION

ORDERS BELOW

The order of the Circuit Court of Madison County, Illinois, granting Respondents leave to reinstate, is unreported. (A-13). The order of the Supreme Court of Illinois denying Petitioner's Petition for Leave to File a

Complaint for Order of Prohibition or, in the Alternative, for Supervisory Order, is unreported. (A-16).

JURISDICTIONAL STATEMENT

The Supreme Court of Illinois, en banc, denied review November 20, 1990. No petition for rehearing was filed. Petitioner invoked the jurisdiction of this Court under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Respondent, Marlin Garien, was injured on September 13, 1981, in Clinton, Iowa, while performing his duties as an employee of the Chicago and North Western Transportation Company. On September 13, 1984, suit was instigated in Madison County, Illinois, under the Federal Employers' Liability Act, § 51-60. On January 2, 1985, the Court sustained the Petitioner's Motion to Dismiss based upon the Doctrine of Forum Non Conveniens, which asserted that Clinton County, Iowa was the most convenient and proper forum. As a result, Respondent refiled his action in Clinton County, Iowa, on March 22, 1985. In Petitioner's Answer to Respondent's Complaint, Petitioner asserted the affirmative defense of the Statute of Limitations, despite the representation to the Respondent and the Madison County Court that the Statute of Limitations defense would not be raised as a condition to granting the forum non conveniens transfer. On January

2, 1985, Respondent's case was dismissed because of failure to prosecute, pursuant to Iowa Rule of Civil Procedure 215.1. On September 14, 1987, Respondent refiled his action in Clinton County, Iowa. Petitioner immediately filed another Motion to Dismiss on the grounds of Statute of Limitations. On June 6, 1988, Judge L. D. Carstensen sustained Petitioner's Motion to Dismiss on the grounds of Statute of Limitations. Finally, on September 14, 1989, Respondent filed his Motion to Reinstate in Madison County on the grounds that Petitioner's actions were directly contrary to the representations made to the court when their Motion to Dismiss on forum non conveniens was granted on May 14, 1990; Respondent Judge Nicholas G. Byron granted reinstatement. On August 20, 1990, Petitioner filed a Motion for Certification for Interlocutory Appeal, which was denied on the same day. On October 29, 1990, Petitioner filed with the Supreme Court of Illinois a Motion for Leave to File a Complaint for Certification for an Order of Prohibition, or in the Alternative, for a Supervisory Order. On November 20, 1990, the Supreme Court of Illinois, en banc, denied Petitioner's Motion.

ARGUMENT

1. THE ORDER OF THE SUPREME COURT OF ILLINOIS DENYING PETITIONER'S MOTION FOR LEAVE TO FILE A COMPLAINT FOR ORDER OF PROHIBITION WAS NOT A FINAL JUDGMENT REGARDING THE PROPRIETY OF JUDGE BYRON'S REINSTATEMENT OF GARIEN.

An examination of the procedural steps taken by the Petitioner and the grounds upon which they were based, reveal that this Petition for Certiorari is untimely. The Petitioner's chief complaint stems from Judge Byron's exercise of his judicial discretion in reinstating Garien's cause of action, after the Petitioner violated the terms and conditions of the original dismissal. Since an appeal of Judge Byron's decision could not be taken as a matter of right, Petitioner filed a Motion for Certification for Interlocutory Appeal, pursuant to Ill. Ann. Stat., Ch. 110A, para. 308. The trial court determined that its order of reinstatement did not involve a question of law as to which there was substantial ground for difference of opinion and denied Petitioner's motion. (A-15).

Petitioner then filed a Motion for Leave to File a Petition for and Original Writ of Prohibition or For a Supervisory Order with the Illinois Supreme Court. However, a writ of prohibition is an extraordinary remedy to be granted "where no exercise of discretion . . . is involved." *People Ex Rel. Foreman v. Nash*, 112 Ill.Dec. 714, 514 N.E. 2d 180, 183 (Ill. 1987). Since reinstatement is discretionary, the Motion for Leave to File the Petition was denied. (A-16). See *Michel v. Gard*, 130 Ill. Dec. 164, 536 N.E. 2d 1375, 1379 (Ill. App., 3d Dist., 1989).

The Illinois Supreme Court's denial of Petitioner's Motion for Leave to File the Petition for an Original Writ of Prohibition or For a Supervisory Order was *not* a *final* judgment or decree rendered by the highest court of a State and therefore does not meet the criteria set forth in 28 U.S.C. § 1257(a), as grounds for a writ of certiorari.

The two relevant cases cited by Petitioner in support of their proposition that certiorari is available are clearly distinguishable from the present case. In *Madruga v. Superior Court*, 346 U.S. 556 (1954), this Court reviewed the California State Supreme Court's affirmation of the lower court's decision, that it had jurisdiction over admiralty questions. It appears that the California Supreme Court gave leave to file a writ of prohibition and *finally disposed* of it by denying it on its merits.

In the present case, the Petitioner's *Motion for Leave to File a Complaint for an Order of Prohibition* has been denied, yet once Garien is adjudicated on the merits, Petitioner may properly file an appeal with the Illinois Court of Appeals and raise the same issues now before the Court

The other relevant case petitioner relies upon as grounds for review by this Court under 28 U.S.C. § 1257(a) is *Fisher v. Dist. Court of Sixteenth Jud. Dist.*, 424 U.S. 382 (1976), where this court granted certiorari to review the Montana Supreme Court's *issuance* of a writ of supervisory control. Again, in the present case Petitioner was not granted leave to file a petition and may take Judge Byron's reinstatement order up on appeal after Garien has had his day in court.

Clearly, Petitioner has attempted to circumvent the normal appellate process, as set forth in the Illinois Rules

of Civil Procedure, by seeking an original action of prohibition or supervisory orders. Such actions have been harshly condemned by the Illinois Supreme Court. *People Ex. Rel. Foreman v. Nash*, 112 Ill. Dec. 714, 514 N.E.2d 180 (Ill. 1987); *Moore v. Strayhorn*, 502 N.E. 2d 727, 728 (Ill. 1986). Given that Petitioner retains the right to appeal any decision rendered by the Madison County Court, after a trial on the merits, and therein raise the issue of reinstatement, this Petition for Certiorari is unwarranted.

2. JUDGE BYRON PROPERLY REINSTATED GARIEN AFTER PETITIONER VIOLATED THE CONDITIONS OF THE ORIGINAL DISMISSAL BASED ON FORUM NON CONVENIENS.

Petitioner's allegation that Judge Byron, in exercising his discretion to reinstate Garien's cause of action, violated the full faith and credit requirements enumerated by Article 4, Section 1, of the United States Constitution, and the limitations imposed by 45 U.S.C. § 56, is also without merit.

This lawsuit was initially filed pursuant to the Federal Employers' Liability Act in the Circuit Court of Madison County, Illinois. The issue of whether the Madison County court had jurisdiction over the case was never in dispute, however, in response to Garien's Complaint, Petitioner filed a Motion to Dismiss, based on *Forum Non Conveniens*. In that motion, Petitioner asserted that Clinton County, Iowa, was the most convenient and proper forum, basing that assertion upon the Illinois Supreme Court's rulings in *Haring v. Chicago & North Western Trans. Co.*, 103 Ill. 2d 50, 470 N.E.2d 288 (1984) and *Foster v. Chicago & North Western Trans. Co.*, 102 Ill. 2d 378, 466

N.E.2d 198 (1984). (A-1). In both decisions, to which Petitioner was a party, the Illinois Supreme Court held that dismissal based on *Forum Non Conveniens* is *conditioned* upon the defendant's waiver of the Statute of Limitations defense, when the cause is transferred to another forum. *Foster*, 466 N.E. 2d at 201; *Haring*, 466 N.E.2d at 29 (emphasis added). In *Haring* and *Foster* the Illinois Supreme Court also held that if the defendant refused to waive the Statute of Limitations defense, then the plaintiff should be given leave to reinstate the cause in the Circuit Court of Madison County. *Foster*, 466 N.E.2d at 201; *Haring*, 470 N.E.2d at 290.

Based upon Petitioner's motion and case law cited therein (*Foster* and *Haring*), Judge Calvo granted their Motion to Dismiss on January 2, 1985. (A-4). As a result, Petitioner was bound to waive the Statute of Limitations defense or face reinstatement. Thus, the Court retained jurisdiction, if the Petitioner raised the limitations defense.

Garien refiled this cause of action in Clinton County, Iowa, on March 22, 1985. In violation of their agreement, Petitioner, in their Answer to Respondent's Complaint, asserted as affirmative defense number one, that:

> "Plaintiff's Complaint was not filed within the appropriate Statute of Limitations, and therefore, this Court lacks subject matter jurisdiction." (A-5).

However, on January 2, 1987, and before ruling on this "affirmative defense," the Clinton County Court dismissed Garien's case for lack of attention, pursuant to Iowa Rule of Civil Procedure 215.1.

On September 14, 1987, Respondent refiled in Clinton County, Iowa. In response, Petitioner, filed a Motion for Summary Judgment, once again, alleging that Respondent's case was barred by the Statute of Limitations. In fact, Petitioner alleged that "this case was filed in [that] court on March 22, 1985, which was *then* barred by the Statute of Limitations." (A-7). They made this allegation though the *Haring* case acknowledged that plaintiff was to file in an appropriate forum within one year from the date of dismissal. Since this case was originally dismissed on January 2, 1985, and filed in Clinton County on March 22, 1985, Petitioner's claim that the limitations period had expired, was baseless. Nevertheless, the Circuit Court of Clinton County, Iowa, granted summary judgment. (A-9).

Since Petitioner's actions in the Iowa courts were directly contrary to the representation made by them to the Madison County, Illinois court, Garien filed a Motion to Reinstate. (A-11). Respondent, Judge Nicholas G. Byron, granted Garien's motion, noting that Petitioner's actions thwarted the provision at this State's policy of allowing dismissal on the question of "interstate forum," on the basis that the order was granted pursuant to *Haring v. Chicago & North Western Transportation Co.*, which conditions such orders "with the expectation that defendant [Petitioner] waived the Statute of Limitations and would, therefore, not assert it." (A-13). It was well within the trial court's discretion to reinstate this case, which they had conditionally dismissed. *Michel v. Gard*, 130 Ill.Dec. 164, 536 N.E.2d 1375, 1379 (Ill.App., 3d Dist., 1989).

CONCLUSION

The Petitioner has gone to great lengths to circumvent the real issue in this case, the fact that *they violated* the conditions of the Madison County dismissal order. As presented, Judge Byron's reinstatement of Garien's case was within the scope of his discretion and may only be appealed after a final judgment has been rendered on the merits. Since that has not yet occurred, this Petition for Certiorari is unwarranted.

Respectfully submitted,

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Counsel for Respondent Garien

APPENDIX

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

IN THE CIRCUIT COURT
FOR THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

MARLIN GARIEN, Plaintiff,	)	
v.	)	No. 84 L 840
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a corporation, Defendant.	)	

MOTION TO DISMISS

NOW COMES the defendant, Chicago and North Western Transportation Company, by its attorneys, George H. Brant and John P. Milroy, and moves the Court to dismiss this action on the basis of *forum non conveniens*. In support of this motion, defendant states the following:

1. On or about September 13, 1981, the plaintiff allegedly strained his neck while working for defendant at Clinton, Iowa.

2. The plaintiff filed this action under the F.E.L.A. in Madison County, Illinois, over 270 miles from the site of the occurrence in Clinton, Iowa.

3. The Court has the inherent power to decline to hear the present case on the basis of *forum non conveniens*.

4. Madison County is not the proper forum for this action because:

(a) The incident took place in Clinton, Iowa.

(b) The plaintiff resides in Clinton, Iowa.

(c) The witnesses at the scene reside in Clinton, or close to Clinton.

(d) The physicians and chiropractors who attended plaintiff are located in Clinton and Dubuque, Iowa.

(e) The hospitals where plaintiff was treated and examined are located in Clinton.

(f) The only connection that the action has with Madison County is that plaintiff's counsel has an office here.

5. A trial of this action in Madison County, Illinois, would greatly increase the expense and inconvenience to the parties and witnesses, and unnecessarily burdens the Court and people of Madison County. When a controversy has no contact with a community, a people and its courts should not be burdened with resolving such a dispute. The congestion in the courts of Madison County has been judicially noticed. *Foster v. Chicago & North Western T. Co.*, 102 Ill. 2d 378 (1984).

6. It is clear that the Clinton County, Iowa, forum better serves the convenience of the parties and witnesses, and promotes the ends of justice. In two cases almost identical to the present one, *Haring v. Chicago & North Western*, No. 58932, filed October 10, 1984, and *Foster, supra*, the Illinois Supreme Court has held that Clinton, Iowa, and not Madison County, is the proper forum.

7. In support of this motion defendant attaches hereto and makes a part hereof as Exhibit A the affidavit

of John Bishof. Defendant also attaches a copy of the *Haring* opinion for convenience.

WHEREFORE, defendant Chicago and North Western Transportation Company prays that the Court enter an order dismissing this action on the basis of *forum non conveniens*.

/s/ George H. Brant
George H. Brant

/s/ John P. Milroy
John P. Milroy
Attorneys for Defendant
Chicago and North Western
Transportation Company

GEORGE H. BRANT
JOHN P. MILROY
165 North Canal Street
Chicago, Illinois 60606
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THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Marlin Garien

Plaintiff

No. 84-L-840

Div. ____

vs.

Chicago and North
Western Transportation Co,

Defendant

ORDER

(Filed Jan. 2, 1985)

This matter coming on for hearing on the motion of defendant to dismiss and the Court having reviewed the pleadings, motion and memorandum of law and affidavit filed herein, and otherwise being fully advised in the premises.

THEREFORE, it is hereby ordered that said motion to dismiss under the doctrine of forum non conveniens is granted.

Date Jan. 2, 1985

/s/ Horace L. Calvo
Judge

EXHIBIT 1

IN THE IOWA DISTRICT COURT FOR
CLINTON COUNTY

MARLIN GARIEN, Plaintiff, vs. CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Corporation, Defendant.	NO. CL 9774 ANSWER

COMES NOW the Chicago and North Western Transportation Company and for its Answer to Plaintiff's Complaint states:

1. Defendant admits paragraph 1 of Plaintiff's Complaint.

2. Defendant denies paragraph 2 due to lack of sufficient information to form a belief.

3. Defendant admits paragraph 3 of Plaintiff's Complaint.

4. Defendant denies paragraph 4 of Plaintiff's Complaint.

5. Defendant denies paragraph 5 and all subparagraphs therein of Plaintiff's Complaint.

6. Defendant denies paragraph 6 of Plaintiff's Complaint.

WHEREFORE, the Defendant, Chicago and North Western Transportation Company, requests that the Court dismiss Plaintiff's Complaint with costs assessed to the Plaintiff.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint was not filed within the appropriate statute of limitations, and therefore, this Court lacks subject matter jurisdiction.

2. Plaintiff has failed to state a claim upon which relief can be granted.

WHEREFORE, the Defendant, Chicago and North Western Transportation Company prays that the Court dismiss Plaintiff's Complaint with the costs assessed to the Plaintiff.

/s/ Paul A. Curtis
Paul A. Curtis

GAMBLE, RIEPE, WEBSTER,
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2600 Ruan Center
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ATTORNEYS FOR DEFENDANT

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Route 111 at Airline Drive
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East Alton, IL 62024

EXHIBIT 2

IN THE IOWA DISTRICT COURT FOR
CLINTON COUNTY

MARLIN GARIEN, Plaintiff, v. CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, Defendant.	)	LAW NO. CL 11882 MOTION TO DISMISS (Filed Oct. 23, 1987)

Defendant, Chicago and North Western Transportation Company, moves the Court to dismiss plaintiff's Petition as barred by the applicable statute of limitations and, as grounds therefore, states that:

1. Plaintiff's Petition shows upon its face that the incident upon which plaintiff bases his cause of action occurred on September 13, 1981, at Clinton, Iowa.

2. Said cause of action is based upon the Federal Employers' Liability Act, 45 U.S.C. §§ 51-60.

3. Actions maintained under the Federal Employers' Liability Act must be commenced within three years from the date the cause of action accrues. (45 U.S.C. § 56, attached).

4. More than six years have elapsed since the alleged injury occurred upon which plaintiff bases his cause of action.

5. This identical case was filed in this Court on March 22, 1985, which was then barred by the statute of limitations.

6. Said cause of action was dismissed by this Court pursuant to Rule 215.1 on January 2, 1987.

7. This Court may take judicial notice of that case, being Marlin Garien v. Chicago and North Western Transportation Company, Law No. CL 9774, heretofore pending in this Court.

WHEREFORE, defendant prays that the case be dismissed with prejudice at plaintiff's cost.

/s/ Bennett A. Webster
Bennett A. Webster

EXHIBIT 3

IN THE IOWA DISTRICT COURT
FOR CLINTON COUNTY

Case No. CL11882

Marlin Garien,

Plaintiff,

vs.

Chicago and North Western Transportation Company,

Defendant.

Order Granting Defendant's
Motion Motion [sic] for Summary Judgment

There comes before the Court without oral argument on the motion calendar pursuant to Iowa Rule of Civil Procedure 117 and District Rule 2.3, Defendant's Motion to Dismiss and Motion for Summary Judgment.

Defendant asks for summary judgment asserting that the action is barred by the three year statute of limitations set our in 45 U.S.C. Section 56. The operative facts are correctly stated in defendant's "Statement of Material Facts" as filed herein on NOvember [sic] 17, 1988.

I find that this action is clearly barred by said statute of limitations and that the motion for summary judgment should be and is granted.

IT IS ORDERED BY THE COURT THAT said motion for summary judgment is granted.

IT IS ORDERED BY THE COURT that plaintiff's petition is dismissed and costs are assessed to plaintiff in the amount of $7100.

The Clerk shall give notice of this order pursuant to Rule of Civil Procedure 82.

Signed: June 6, 1988.

/s/ L. D. Carstensen
L. D. Carstensen
JUDGE OF THE SEVENTH
JUDICIAL DISTRICT OF
THE STATE OF IOWA

EXHIBIT 4

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

MARLIN GARIEN, Plaintiff, v. CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a corporation, Defendant.	)	84-L-840

MOTION TO REINSTATE

Comes now Plaintiff, MARLIN GARIEN, by and through his attorneys, PRATT AND CALLIS, P.C., and for his Motion to Reinstate states as follows:

1. That on September 13, 1981 Plaintiff was an employee of Chicago and North Western Transportation Company was allegedly injured while in Clinton, Iowa.

2. That on September 13, 1984 suit was instituted in Madison County, Illinois under the Federal Employers' Liability Act.

3. That on November 2, 1984 Defendant by and through its attorneys of record filed a Motion to Dismiss on Forum Non Conveniens.

4. In oral argument and in their Motion to Dismiss represented to the Court that another available forum existed for the Plaintiff in which to pursue his action without risk of losing his cause of action. Whereupon, the

Court sustained Defendant's Motion to Dismiss on January 2, 1985.

5. That on March 22, 1985 Plaintiff refiled his action in Clinton County, Iowa. Defendant filed a Motion to Dismiss on the grounds of Statute of Limitations. Attached hereto is a copy of the Motion which will be referred to as Exhibit A.

6. That on June 6, 1988, Judge L. D. Carstensen sustained Defendant's Motion to Dismiss on the grounds of Statute of Limitations.

7. As Defendant's actions were directly contrary to the representation to this Court, Plaintiff would request that his cause of action filed in Madison County be reinstated as it is the only appropriate forum in which this case can continue.

WHEREFORE, for the following reasons Plaintiff prays that this cause be reinstated and placed upon the next available trial docket.

PRATT AND CALLIS, P.C.

BY: /s/ Patrick O'Brien
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ATTORNEYS FOR PLAINTIFF

EXHIBIT 5

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

MARLIN GARIEN, Plaintiff, -vs- CHICAGO and NORTH WESTERN TRANSPORTATION COMPANY, a Corporation, Defendant.	)	NO. 84 L 840

ORDER
(Filed May 14, 1990)

On January 19, 1990, Plaintiff's Motion to Reinstate was duly argued before the Court and thereupon taken under advisement in order for the parties to submit memoranda in support of their respective positions.

Upon review of all of the given events, the Court finds that it must take note of the Defendant's assertion of the Affirmative Defense of the Statute of Limitations in respect of the Plaintiff's refiling in Clinton County, Iowa on March 22, 1985. Notwithstanding the subsequent delays and corresponding orders of the Iowa courts, when the Honorable Horace L. Calvo granted Defendant's Motion for Dismissal of this cause on the basis of forum non conveniens, January 2, 1985, on the basis of *Haring v. Chicago and North Western Transportation Company*, 470 N.E. 2d 288, 103 Ill. 2d 50 (1984), [the provision contained in said cause respecting the subsequent assertion, as in this case, of the Statute of Limitations applied, and the Court therein stating as follows, to wit:

> "If the case is dismissed, the Order is to be conditioned on the waiver by the defendant of the defense of the statute of limitations should the plaintiff elect to file in an appropriate forum. If the defendant refuses to waive the defense of the statute of limitations, or if the defendant asserts that defense in a case filed by the plaintiff in an appropriate forum within one year from the date of dismissal based on the cause of action asserted herein, then the plaintiff should be given leave to reinstate this cause in the Circuit Court of Madison County, Illinois."]

the Order was granted with the expectation that Defendant waived the Statute of Limitations and would, therefore, not assert it.

Accordingly, therefore, the Court does find that this act of defendant thwarted the provisions of this State's policy in allowing dismissal on the question of "interstate forum" on the basis of the *Haring* decision.

WHEREFORE, it is Adjudged, Ordered and Decreed that Plaintiff's Motion to Reinstate, the Orders of the Iowa courts to the contrary notwithstanding, is hereby allowed, and this cause ordered reinstated for prosecution thereof by the Plaintiff.

Clerk to send copies of this order to all attorneys of record.

DATED this 14th day of MAY, 1990.

/s/ Nicholas G. Bryon
NICHOLAS G. BRYON
CIRCUIT JUDGE

THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Marlin Garien — Plaintiff

No. 84
Div. L
840

vs.

Chicago & North Western
Transportation Co.

Defendant

ORDER
(Filed Aug. 20, 1990)

Cause comes for hearing on Defendant's Motion for Certification for Interlocutory Appeal, Parties appear through their respective parties, Plaintiff opposing said Motion, arguments heard and the Court being fully advised in the premises:

It is hereby ordered that Defendant's Motion is Denied.

Date Aug 20, 1990

/s/ Nicholas G. Bryon
Judge

(SEAL)

STATE OF ILLINOIS

SUPREME COURT CLERK

SUPREME COURT BUILDING

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CLERK OF THE COURT
(217) 782-2035

FIRST DISTRICT OFFICE
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(312) 793-1332

November 20, 1990

Mr. Theodore J. Williams, Jr.
One Metropolitan Square
Suite 2600
St. Louis, MO 63102-2740

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 71025 – People ex rel. Chicago and North Western Transportation Company, petitioner, v. Hon. Nicholas G. Byron, Judge of the Circuit Court of Madison County, et al., respondents.

Motion by petitioner for leave to file a petition for an original writ of prohibition or for a supervisory order. Motion *denied*. Calvo, J., took no part.

JH:lgr
cc: Hon. Nicholas G. Byron
Mr. Patrick S. O'Brien